

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JAN 3 1 2005

JEFF HATCH-MILLER, Chairman WILLIAM A. MUNDELL MARC SPITZER MIKE GLEASON KRISTIN K. MAYES

DOCKETED BY

NO

In the matter of:

NOEL EUGENE CULLISON and BARBARA
CULLISON, husband and wife,
3108 East Siesta Lane
Phoenix, AZ 85050

SOLUTIONS, SOURCES, & CONSULTING,
LLC
3108 East Siesta Lane
Phoenix, AZ 85050

Phoenix, AZ 85050

ENERGY SAVINGS SOLUTION, INC. 3108 East Siesta Lane
Phoenix, AZ 85050

Respondents.

DOCKET NO. S-03566A-04-0000

DECISION NO.

ORDER TO CEASE AND ORDER OF RESTITUTION. FOR ADMINISTRATIVE PENALTIES AGAINST NOEL EUGENE CULLISON CULLISON. and BARBARA SOLUTIONS, SOURCES, CONSULTING, **AND** LLC **ENERGY** SAVINGS SOLUTION, INC.

67536

On September 30, 2004, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order To Cease and Desist, Order for Restitution, for Administrative Penalties and for Other Affirmative Relief ("Notice") with respect to Respondents Noel Cullison, Barbara Cullison, Solutions, Sources, & Consulting, LLC ("SSL") and Energy Savings Solution, Inc. ("ESS") (collectively "Respondents"). The Division served the Notice on the Respondents via certified mail, return receipt requested. Respondents received the Notice on October 14, 2004. The Notice specified that the Respondents would be afforded an opportunity for an administrative hearing regarding this

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matter upon filing a written request with Docket Control of the Commission within ten days of receipt of the Notice. The Respondents failed to request a hearing within the required time.

I.

FINDINGS OF FACT

- Respondent Noel Eugene Cullison ("Cullison") resides at 3108 East Siesta Lane,
 Phoenix, AZ 85050.
- 2. Respondent Solution, Sources, and Consulting, LLC ("SSC") is an Arizona limited liability company, located at 3108 East Siesta Lane, Phoenix, AZ 85050. Cullison formed SSC and is a member of it.
- 3. Respondent Energy Savings Solution, Inc. ("ESS") is an Arizona corporation, located at 3108 East Siesta Lane, Phoenix, AZ 85050. Cullison is ESS's president, secretary and treasurer. The Commission administratively dissolved ESS on July 6, 2004, for failure to file its annual report.
- 4. Barbara Cullison was at all relevant times the spouse of Cullison. Barbara Cullison is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.
- 5. At all times relevant, Cullison was acting for his own benefit, and for the benefit or in furtherance of the marital community.
- 6. Cullison, SSC and ESS may be collectively referred to as "Cullison Respondents." Barbara Cullison may be referred to as Respondent Spouse.
- 7. Beginning in 1994, the Cullison Respondents offered stock, promissory notes or investment contracts to investors. The Cullison Respondents raised \$1,753,419.29 from 16 investors, most of whom are Arizona residents.
- 8. Cullison was an Arizona licensed insurance agent for Northwest Mutual Life Insurance Company ("Northwestern Mutual") until July 2001 when he failed to renew his license. Most of the investors were clients of Northwestern Mutual and Cullison.

- 9. Cullison offered several investment opportunities to the investors. With one investment, he told investors that he had a personal investment account at Northwestern Mutual that paid 8.8%. He told investors that if they provided him funds, he would place their funds in his account and pay them that interest. Those investors who accepted this opportunity received a promissory note signed by Cullison for the amount invested. Cullison did not provide any documents to investors regarding the alleged account at Northwestern Mutual. In fact, Cullison had no such account at Northwestern Mutual in which he could place investor funds.
- 10. Cullison told other investors that his company, SSC, had contracts to provide ice machines to U.S. Navy ships in San Diego, California. He told investors that SSC would use the funds as capital for the company, to build facilities to service the contracts or to purchase the machines to be sold to the Navy. SSC had no contracts to provide any equipment or services to the Navy.
- 11. Cullison solicited other investors with an investment opportunity in ESS. He told them that ESS, which he owned, was marketing a product which would prevent power surges in electrical current to buildings. Cullison offered stock in ESS to prospective investors. At least one investor received a letter confirming that he owned a percentage of the company, although no shares were issued to him. Other investors in ESS received notes signed by Cullison.
- 12. Cullison told other investors that he had the opportunity to broker the sale of a group of nursing homes in the Midwest. He informed the investors that he would receive a fee upon the completion of the transaction. He told them that he would use to money from investors to fund expenses incurred in attempting to arrange the sale.
- 13. Some of the investors, at Cullison's suggestion, took money out of Northwestern Mutual life insurance policies that they owned to invest with the Cullison Respondents. At least some of the investors did not realize that they were borrowing money from their insurance policy and would be charged interest by Northwestern Mutual for their policy loans.

- 14. Most investors received notes from the Cullison Respondents, or confirmation from the Cullison Respondents that they owned part of SSC or ESS, although those investors did not receive stock certificates.
- 15. The Cullison Respondents did not provide any of the investors with prospectuses, financial statements or other documents disclosing risk.
- 16. The Cullison Respondents did not inform investors that other than limited income in 2000, SSC had no income in 2001 or 2002 and that ESS had no income.
- 17. For those investors who received notes from the Cullison Respondents, the Cullison Respondents offered interest rates ranging from 6% to 24%.
- 18. Investor funds for all the different investments were deposited in Cullison's personal account. Interest was paid to some investors from income Cullison earned in his insurance business, from investors' own principal or from additional investor funds.
- 19. Much of the money raised by the Cullison Respondents from all investors was used for Cullison's personal living expenses. Investors had not consented to allow Cullison to use their investments for such expenses.
- 20. Certain investors complained or brought suit against Northwestern Mutual, alleging its responsibility for the actions of Cullison. Northwestern Mutual has settled many of these complaints and lawsuits, paying investors some of the amounts lost due to the actions of the Cullison Respondents. Investors have received back \$574,227.28, principally from Northwestern Mutual. Therefore, the Cullison Respondents owe investors the principal amount of \$1,179,186.01.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

- 2. The Cullison Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).
- 3. The Cullison Respondents violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.
- 4. The Cullison Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.
- 5. The Cullison Respondents violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.
- 6. Cullison directly or indirectly controlled SSC and ESS within the meaning of A.R.S. § 44-1999. Therefore, he is liable to the same extent as SSC and ESS for its violations of A.R.S. § 44-1991.
- 7. The Cullison Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.
- 8. The Cullison Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.
- 9. The Cullison Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that the Cullison Respondents, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that the Cullison Respondents and Barbara Cullison shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$1,179,186.01, plus interest at the rate of 10% per annum from the date of each investment until paid in full. The Cullison Respondents and Barbara Cullison shall be entitled to setoffs for restitution paid to investors and verified by the Director of Securities. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona. If the Cullison Respondents and Barbara Cullison do not comply with this order of restitution, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that the Cullison Respondents and Barbara Cullison shall, jointly and severally, pay an administrative penalty in the amount of \$50,000, payable to the "State of Arizona." Payment shall be made in full by cashier's check or money order on the date of this Order. If the Cullison Respondents and Barbara Cullison do

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not comply with this order for administrative penalties, any outstanding balance may be deemed in 1 default and shall be immediately due and payable without notice or demand. 2 IT IS FURTHER ORDERED that this Order shall become effective immediately. 3 4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION 5 COMMISSIONER 8 9 **COMMISSIONER** 10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, 11 Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the 12 official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 31st day of 13 Jan , 2005 14 15 16 Executive Secretar 17 18 19 DISSENT 20 21 DISSENT 22 23 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail lhogan@cc.state.az.us. 24 (md) 25

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